

**United Paperworkers International Union, Local 1048, AFL-CIO (Jefferson Smurfit Corporation) and Mick Ramsey. Case 9-CB-9308**

June 19, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX  
AND HIGGINS

On January 6, 1997, Administrative Law Judge Michael O. Miller issued the attached decision. The Respondent filed exceptions and a supporting brief.<sup>1</sup>

The National Labor Relations Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Paperworkers International Union, Local 1048, AFL-CIO, Pleasureville and Louisville, Kentucky, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> The Respondent in its exceptions, inter alia, "moves the NLRB to remand this case back to the Regional Director for further proper investigation for potential conciliation and settlement" of the charge filed in this case. We deny the Respondent's motion as lacking in merit.

*Eric A. Taylor, Esq.*, for the General Counsel.  
*Bill Young, President*, for the Respondent.  
*Mick Ramsey, pro se.*

**DECISION**

**STATEMENT OF THE CASE**

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in Louisville, Kentucky, on November 19, 1996, based on a charge filed by Mick Ramsey, an individual, on March 7, 1996, and a complaint and notice of hearing which was issued on May 1, 1996, by the Regional Director of Region 9 of the National Labor Relations Board (the Board). The complaint alleges that United Paperworkers International Union, Local 1048, AFL-CIO (Respondent or the Union) violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by attempting to cause Jefferson Smurfit Corporation,<sup>1</sup> his employer, to discipline Ramsey for reasons other than his failure to pay uniform dues and initiation fees and because of his dissident union and/or protected concerted activities. Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering

<sup>1</sup> The name of the Employer appears as amended at hearing.

the briefs filed by the General Counsel and Respondent, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Jefferson Smurfit Corporation (the Employer) is engaged in the manufacture of corrugated boxes at its facility in Louisville, Kentucky. During the past 12 months, in the course and conduct of its business operations, the Employer purchased and received at that facility goods and materials valued in excess of \$50,000 which were shipped to it directly from points outside the Commonwealth of Kentucky. The complaint alleges, Respondent admits and I find and conclude that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. Background**

Respondent represents the Employer's production employees in a collective-bargaining relationship which has existed for an unspecified number of years, at least since 1991. The president of the Local Union is Bill Young. His son, Rick Young, is the financial secretary and treasurer. Mick Ramsey is an employee and union member in good standing. He holds no union office but regularly attends union meetings and otherwise takes an active interest in the functions of his union. At the time of the events herein, he was assigned to the second shift. He has never failed or refused to pay uniform initiation fees and dues.

The Employer maintains, and takes seriously, a written policy prohibiting racial harassment. Any complaints of such harassment are expeditiously investigated, discussed with personnel in corporate headquarters, and dealt with through appropriate discipline. The 96 or so employees in the bargaining unit includes persons of various racial and ethnic backgrounds.

**B. Protected Activity**

In the fall of 1995, while temporarily on the first shift, Ramsey had occasion to discuss an upcoming charitable drive with several other employees. In the course of that conversation, he heard employee Roy Montgomery state that he was not going to contribute "because it only helps niggers and Mexicans." Ramsey, whose heritage is Mexican and Native American, objected to Montgomery's comment and left the area. As he was walking back toward his work station, another employee, LaTroy Gilkey, noticed that he was upset and asked what had happened. A third employee told Gilkey what Montgomery had said and Ramsey confirmed it. Gilkey reported Montgomery's offensive statement to Dan Thompson, the plant superintendent.

The Employer investigated the allegation, questioning Ramsey and others. It was concluded that Montgomery had made such a statement; he received a 15-day suspension. But for his long tenure, he would have been discharged for this violation of the Employer's harassment policy. The Union's

officers were aware that Montgomery had been suspended and could have been discharged for this misconduct.

Several times thereafter, either Bill Young or Rick Young asked Ramsey why he had not come to the Union with his complaint against Montgomery. Ramsey repeatedly told them that he had not initiated that complaint. They threatened to fine him for "ratting" on Montgomery. Rick Young then asked him to come to a union executive board meeting on January 28, 1996, "to tell his side of the story" with respect to this incident and Montgomery's discipline. Ramsey told Rick Young that there was nothing to tell and declined to attend that meeting.

Montgomery, however, did attend the January 28 meeting. At that time, he claimed that Ramsey had made an equally offensive racially derogatory remark at some time during the summer of 1995.<sup>2</sup> Although Montgomery had been questioned and then suspended in November for the racially derogatory remark attributed to him, and had known of Ramsey's role in his discipline, he did not make any reference to Ramsey's allegedly similar remark prior to that January 28 meeting.<sup>3</sup>

#### C. Dissident Union Activity

Beginning in about February 1995, Ramsey had started objecting to the way in which Local 1048 was being run. In that month, he read a letter at the union meeting which accused the Youngs of financial improprieties, harassing and intimidating members who disagreed with them or who participated in company activities with nonmembers, withholding information from union members and other misconduct. Present at that meeting were Jerry Johnson and Ken Harrell, regional representatives of the Union. Thereafter, he spoke with both of those representatives, asking how their investigation of his claims was going.

In July 1995, Ramsey sought to amend the bylaws to provide for the election of a negotiating committee and to require membership approval for all expenses over \$100. Both of these proposals stemmed from deficiencies he perceived in Bill Young's conduct of the Union's presidency. Ramsey secured the necessary signatures on a petition; he presented that petition to Bill Young. On his receipt of the proposed amendments, Bill Young became belligerent, telling Ramsey to "stick them up his ass." When Ramsey said that he had consulted with Jerry Johnson with respect to the procedure for amending the bylaws, Young told him that "Johnson doesn't run this Union, I do." He also told Ramsey that "it

would take a better man than you to take me down." To another employee, Bill Young said, in reference to Ramsey, "I'm going to get that son-of-a-bitch." The Union constitution requires that proposed amendments be read at the next meeting; Bill Young refused to do so. The amendments' proponents then had another member, one who had run against Young in an earlier election, read them to the body.

In the winter of 1995, Ramsey circulated a petition to have the departmental steward removed. He presented that petition to Bill Young who refused to act.

In the February 1996 union meeting, held in about the middle of that month, Bill Young told Ramsey, "I don't like you. Stay away from me, or else." He did not reply when Ramsey asked if that was a threat.

On February 19, 1996, Ramsey handed a list of formal charges against Bill Young to Rick Young, the Union's secretary treasurer, as required by the bylaws. The charges related to Bill Young's role in all of the foregoing incidents. Rick Young told him, "I don't agree with these but I will take them."

After he had filed his charges, Ramsey heard Bill Young shout at him, as he entered the plant, "There goes the new Union president." Ramsey told Young that he did not want to be president but merely to see Young out of office.<sup>4</sup>

#### D. Alleged Retaliation

On February 22, Rick Young called Ray Madore, the plant manager. He reported Montgomery's allegation that Ramsey had made racial slur against the African-American employees. He also told Madore that the African-American employees were upset by this remark. Rick Young named Montgomery and Gary Hash as employees who allegedly heard Ramsey make the statement. Rick Young was vague about when this had allegedly occurred. He did not specifically request that Ramsey be disciplined.

Madore was taken aback by Rick Young's report as this was the first time in 5 years that Rick Young had complained to management about an employee. Rick Young claimed that he reported it because, as a union officer, he was aware of the Company's policy on racial harassment and was concerned.<sup>5</sup>

Madore investigated the allegation. Ramsey denied having made any such statement. Hash told him that he had not spoken with Ramsey in several months and did not want to get involved. Montgomery recalled an unspecified comment made some 6 to 8 months earlier to which no one had taken offense; he declined to name any witnesses. Madore was also told by those African-American employees with whom he spoke that they had no knowledge of any racial slurs uttered by Mick Ramsey. Madore asked Rick Young to provide any

<sup>2</sup> Having concluded, as did the Employer, that there was no credible evidence that he made such a remark, I find that it would serve no purpose to quote the alleged slur.

<sup>3</sup> Noting that Ramsey credibly denied making any such statement, the passage of time before Montgomery made any reference to such a statement as having been uttered by Ramsey and the conflicts between Montgomery's testimony and that of Rick Young, as well as the witnesses' comparative demeanors, I credit neither Montgomery's claim that Ramsey made a racially derogatory remark nor his contention that he had reported it to the Union when he returned from his suspension, shortly after Thanksgiving. I note that even if Montgomery is credited with respect to when he first told anyone of Ramsey's alleged remark and I find that he had reported that alleged remark in late November or early December, there was still a hiatus of nearly half a year between the alleged remark and his mention of it.

<sup>4</sup> Bill Young did not testify; Ramsey's testimony was credibly offered and stands uncontradicted.

<sup>5</sup> Noting Respondent's unexplained failure to produce the corroborating evidence of Jerry Johnson, a union officer, I cannot credit Rick Young's claim that he had discussed the remark and other misconduct attributed to Ramsey with Johnson during a union meeting on February 11 and had been instructed, at that time, to let the Employer handle it. *Spalding, Division of Questor Corp.*, 225 NLRB 946, 950 (1976). In any event, I note that, as of February 11, Rick Young had known of the alleged slur for at least 2 weeks and perhaps for as much as 2 months (if Montgomery's testimony were to be credited) and had taken no action.

additional information he might have; Rick Young came up with none. On the basis of the information before him, Madore concluded that no ethnic or racial harassment had taken place. Accordingly, Ramsey was not disciplined.

Subsequent to Madore's having reached this conclusion, Bill Young came to his office. The elder Young told Madore that Madore had "screwed up" by questioning Hash over the phone. In the course of that conversation, he also told Madore that "Ramsey was a problem" and expressed his displeasure at the outcome of Madore's investigation.

#### E. Conclusions

A union violates Section 8(b)(1)(A) and (2) of the Act when it "cause[s] or attempt[s] to cause an employer to discriminate against an employee in violation of subsection 8(a)(3)." *Carpenters Local 626 (Strawbridge & Clothier)*, 310 NLRB 500 (1993). In this case, the issues are whether the Union sought to have the Employer impose discipline on Ramsey and, if it did, whether it did so because he had engaged in protected activities. Both questions, I find, must be answered in the affirmative.

[T]he Board has stated that "[t]o establish an 'attempt to cause' violation, there must be some evidence of union conduct; it is not sufficient that an employer's conduct might please the union." *Wenner Ford Tractor Rentals, Inc.*, 315 NLRB 964, 965 (1994), quoting *Toledo World Terminals*, 289 NLRB 670, 673 (1988).]

In the course of the hearing and in its written submission following the close of hearing, Respondent noted that it had made no direct or express demand that Ramsey be disciplined. A finding of violation does not require that it do so. As the Board has noted, "direct evidence of an express demand by the Union is not necessary where the evidence supports a reasonable inference of a union request." *Avon Roofing & Sheet Metal Co.*, 312 NLRB 499 (1993). Here, the Union's representative, Rick Young, reported an allegation of racial harassment to the Employer with full knowledge of the Employer's rules concerning such conduct and of its policy of assigning strong discipline to violators of those rules. That report, particularly when coupled with his statement, apparently unsupported by any factual basis, that the African-American employees were upset by the alleged remark, and with Bill Young's complaint when Madore refused to discipline Ramsey, warrants the inference of an implied request that Ramsey be disciplined. The inference stands un rebutted on this record.

*Wright Line*<sup>6</sup> provides the analytical mode and determines the allocations of burdens of proof in all cases of alleged discrimination; it is applicable to cases, such as this, of alleged union attempts to cause discrimination. See *Avon Roofing*, supra at 503. Pursuant to that test, the Board requires:

[T]he General Counsel to persuade that [an unlawful] sentiment was a substantial factor in the challenged . . . decision. The burden of persuasion then shifts to the [respondent] to prove its affirmative defense that it

would have taken the same action even if the employees had not engaged in protected activity.<sup>7</sup>

In order to establish discriminatory motivation, the General Counsel must show union or other protected activity, knowledge, animus, and an adverse action taken or sought which has the effect of discouraging the protected activity.<sup>8</sup> Inferences of animus and discriminatory motivation may be warranted under all the circumstances of a case, even without direct evidence.<sup>9</sup> Evidence of suspicious timing,<sup>10</sup> and false reasons<sup>11</sup> support such inferences.

Here, all of the evidence points unerringly toward Respondent's discriminatory motivation. Ramsey was involved in dissident union activity. He sought to correct what he perceived to be abuses by the Local's leadership, the Youngs. He was also involved in protected concerted activity, joining with others to enforce the Employer's rules concerning racial harassment. His efforts earned him the direct and openly expressed enmity of the Local Union's president, Bill Young.

Rick Young's animus was less overt but clearly inferable from his conduct. Thus, he called Madore to report Ramsey's alleged racist remark within 3 days of Ramsey's submission of internal union charges against his father, after possessing knowledge of the alleged slur for between 2 weeks and 2 months. In doing so, he varied from his longstanding practice of keeping such matters within the Union and not involving management. Indeed, Rick Young had expressly criticized Ramsey for taking the Montgomery complaint to management rather than dealing with it through the Union. Finally, in reporting this alleged slur, he exaggerated the impact it had on minority members of the work force.

Respondent has offered no credible evidence that it would have reported the alleged slur to management absent Ramsey's protected activity. The Union's practice of not involving management in disputes between unit employees, from which Rick Young deviated by making this report to management, would indicate that it would not have done so.

Based on the foregoing, I am compelled to conclude that Respondent sought to have Mick Ramsey suffer discipline from the employer, discipline which would have affected his job security or tenure and discouraged him from engaging in protected activities, because he had engaged in dissident union activity and other protected concerted activities.<sup>12</sup> By its conduct, I find Respondent has violated Section 8(b)(1)(A) and (2).

#### CONCLUSION OF LAW

By attempting to cause the Company to impose discipline on Mick Ramsey, because Ramsey had engaged in dissident union and other protected concerted activities, the Union has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

<sup>7</sup> *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996).

<sup>8</sup> *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991).

<sup>9</sup> *Fluor Daniel, Inc.*, 304 NLRB 970 (1991).

<sup>10</sup> *Electronic Data Systems Corp.*, 305 NLRB 219 (1991).

<sup>11</sup> *Adco Electric*, 307 NLRB 1113, 1128 (1992), enf. 6 F.3d 1110 (5th Cir. 1993).

<sup>12</sup> There was neither evidence nor any contention that the discipline was sought because of any failure to pay uniform initiation fee or dues.

<sup>6</sup> *Wright Line*, 251 NLRB 1083 (1980), enf. 662 F.2d 899 (1st Cir. 1981).

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>13</sup>

## ORDER

The Respondent, United Paperworkers International Union, Local 1048, AFL-CIO, Pleasureville and Louisville, Kentucky, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to cause the Company to impose discipline on Mick Ramsey or other employees because they had engaged in dissident union activity and/or other protected concerted activities.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files, and ask the Employer to remove from the Employer's files, any reference to the unlawful and unsupported report that Mick Ramsey had uttered a racial slur and within 3 days thereafter notify the employee in writing that it has done so and that it will not use the report against him in any way.

(b) Within 14 days after service by the Region, post at its offices in Pleasureville and Louisville, Kentucky, copies of the attached notice marked "Appendix."<sup>14</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized rep-

<sup>13</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>14</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Employer has gone out of business or the Union has been decertified, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Employer at any time since March 7, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT attempt to cause the Company to impose discipline on Mick Ramsey or any other employee because of their dissident union activity and/or their other protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, remove from our files, and ask the Employer to remove from the Employer's files, any reference to the unlawful and unsupported report that Mick Ramsey had uttered a racial slur and WE WILL, within 3 days thereafter, notify Mick Ramsey in writing that we have done so and we will not use such a report against him in any way.

UNITED PAPERWORKERS INTERNATIONAL  
UNION, LOCAL 1048, AFL-CIO